



Signed and Filed: July 3, 2025

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Bankruptcy Case No. 22-30028
)	
E. LYNN SCHOENMANN,)	Chapter 7
)	
)	
Debtor.)	
)	
)	
UNITED STATES OF AMERICA,)	Adversary Proceeding
)	No. 23-03043
Plaintiff,)	
)	
v.)	
)	
E. LYNN SCHOENMANN,)	
)	
Defendant.)	
)	

MEMORANDUM DECISION AFTER TRIAL

On June 9 and 10, 2025, the court conducted a trial to determine the dischargeability of debt owed by Debtor-Defendant E. Lynn Schoenmann ("Schoenmann") to Plaintiff United States Small Business Administration ("SBA"). At the conclusion of the trial, the court took the matter under submission. For the reasons set forth below, the court determines that the SBA has proven by a preponderance of the evidence that a prepetition

COVID-19 Economic Injury Disaster Loan ("EIDL") the SBA made to Schoenmann is nondischargeable under Section 523(a)(2)¹ and a separate penalty owed to the SBA due to Schoenmann's misuse of the EIDL is nondischargeable under Section 523(a)(7).

This Memorandum Decision After Trial constitutes the court's findings of fact and conclusions of law pursuant to Rule 7052.

I. Background

Schoenmann was admitted to the California state bar in 1981, after which she was periodically inactive until her resignation from the bar in 2014 to focus on her trustee practice. From 1997 to 2024, Schoenmann served as a chapter 7 panel trustee. She acted as a sole proprietor of her trustee practice, which encompassed other fiduciary roles at some points, such as state receiverships (Day 2 trial testimony of Schoenmann).

In her personal life, Schoenmann was married to Donn R. Schoenmann ("Donn") from 1993 until Donn's passing in 2018. At some point in May 2016, Schoenmann learned that Donn had, via counsel, modified his estate planning documents as well as certain grant deeds to marital properties. As a result of those modifications, a marital trust holding assets jointly with a right of survivorship, along with the rights of survivorship in

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, "Section 636(b)" refers to 15 U.S.C § 636, "Rule" references are to the Federal Rules of Bankruptcy Procedure, and "Civil Rule" references are to the Federal Rules of Civil Procedure.

1 the grant deeds, were revoked. After learning of these
2 modifications, Schoenmann initiated divorce proceedings.

3 In November 2016, Schoenmann and Donn signed a Post-Marital
4 Agreement ("PMA") agreeing, among other things, that (1) their
5 earnings and retirement account contributions would be treated
6 as separate property (a deviation from California law which
7 would deem earnings or retirement contributions by either spouse
8 to be community property), with the lion's share held by
9 Schoenmann; and (2) three of the four real properties would once
10 again be held jointly with the right of survivorship.
11 Schoenmann dismissed the divorce proceeding thereafter.

12 Upon Donn's passing in 2018, a probate for Donn was opened,
13 and in 2019, litigation within the probate was initiated against
14 Schoenmann by Donn's adult children and grandchild from Donn's
15 first marriage, who are Schoenmann's stepchildren and step-
16 grandchild, challenging the validity of the PMA ("probate
17 litigation").

18 Around two years into the probate litigation, a bifurcated
19 trial that spanned ten court days was conducted in November
20 2021. On December 27, 2021, the probate court entered a 26-page
21 Tentative Decision. That Tentative Decision concluded that the
22 PMA was a product of undue influence by Schoenmann against Donn,
23 and that the PMA was invalid as a result.

24 While the probate litigation trudged on from 2019 through
25 2021, the COVID-19 pandemic overtook the country. In March
26 2020, in response to the global crisis, Congress passed the
27 Coronavirus Preparedness and Response Supplemental
28

1 Appropriations Act, 2020,² which deemed COVID-19 to be a disaster
2 covered by the EIDL program. Congress then enacted the
3 Coronavirus Aid, Relief, and Economic Security Act ("CARES
4 Act"),³ which established the Paycheck Protection Program and
5 expanded eligibility for the EIDL program, each loan programs
6 that made long-term, low-interest loans to businesses and non-
7 profits that had suffered economic injury due to COVID-19.

8 After having received two loans under the Paycheck
9 Protection Program, Schoenmann received an email notice from the
10 SBA on October 4, 2021, notifying her that she may be eligible
11 to receive an EIDL for her business. On October 8, 2021,
12 Schoenmann submitted an EIDL application ("Application") (SBA
13 Exs. 5, 22). The Application contained a specific section for
14 Schoenmann and other applicants to list "Contingent Liabilities"
15 that included "Legal Claims & Judgments," as well as a separate
16 section for applicants to list "Other Liabilities (describe in
17 detail)." Schoenmann did not mention the probate litigation in
18 those sections or anywhere else in her Application (SBA Ex. 5).
19 Upon approval of her Application, Schoenmann signed a Loan
20 Agreement promising that she would only use the EIDL proceeds
21 "solely as working capital to alleviate economic injury caused
22 by the disaster occurring in the month of January 31, 2020 and
23 continuing thereafter." (SBA Ex. 6).

24 Schoenmann signed the Loan Agreement on October 29, 2021.
25 On December 13, 2021, she received loan proceeds in the amount

26
27 ² Pub. L. No. 116-123, 134 Stat. 146 (Mar. 6, 2020).

28 ³ Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

1 of \$924,700 (minus a small fee). Almost immediately after
2 receiving the proceeds, Schoenmann spent nearly one third of
3 them on probate litigation expenses including attorney fees and
4 fees for expert witnesses. She then spent another \$155,000 on
5 retainers for bankruptcy professionals. A small amount (around
6 \$55,000) was spent on Schoenmann's trustee business. The
7 remaining approximately \$450,000 was then placed in a brokerage
8 account to, in Schoenmann's own words, earn income for her until
9 she had to pay back the EIDL over 30 years at a generously low
10 \$3.75 interest rate.

11 On January 14, 2022, just over two weeks after the
12 Tentative Decision was issued and just one month after she
13 received the EIDL proceeds, Schoenmann filed bankruptcy. The
14 SBA timely filed this adversary proceeding. After granting,
15 then reconsidering Schoenmann's motion for partial summary
16 judgment, the court determined that the main factual issues for
17 it to decide at trial were the SBA's reliance on Schoenmann's
18 Application and Loan Agreement (Dkt. 65) and the amount of its
19 damages.

20 **II. The EIDL is Nondischargeable Pursuant to Sections**
21 **523(a) (2) (A) and alternatively, (a) (2) (B).**

22 Section 523(a) (2) "excepts from discharge debts arising
23 from various forms of fraud." *Lamar, Archer & Cofrin, LLP v.*
24 *Appling*, 584 U.S. 709, 715, (2018). Subpart (A) concerns "false
25 pretenses, a false representation, or actual fraud, other than a
26 statement respecting the debtor's . . . financial condition"
27 while subpart (B) focuses on "statement[s] in writing . . . that
28

1 [are] materially false. . .respecting the debtor's or an
2 insider's financial condition." Section 523(a)(2).

3 The SBA seeks a ruling that the EIDL is excepted from
4 discharge pursuant to both subparts of Section 523(a)(2).

5 A creditor must prove the following elements by a
6 preponderance of the evidence to establish the
7 nondischargeability of a debt under Section 523(a)(2)(A):

8 "(1) misrepresentation, fraudulent omission,
9 or deceptive conduct by the debtor; (2)
10 knowledge of the falsity or deceptiveness of
11 [the debtor's] statement or conduct; (3) an
12 intent to deceive; (4) justifiable reliance
13 by the creditor on the debtor's statement or
14 conduct; and (5) damage to the creditor
15 proximately caused by his reliance on the
16 debtor's statement or conduct."

17 *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*,
18 234 F.3d 1081, 1085 (9th Cir. 2000) (citations omitted).

19 A creditor must prove nearly those same elements to
20 establish the nondischargeability of a debt under Section
21 523(a)(2)(B), except that the misrepresentation must be a
22 statement in writing respecting the debtor's financial
23 condition, that the statement must be material, and the creditor
24 reasonably relied on the statement. *In re Siriani*, 967 F.2d 302,
25 304 (9th Cir. 1992).

26 The SBA has proven all the above elements respecting both
27 subparts (A) and (B).
28

1 **A. Fraudulent Misrepresentation as to Use of the Loan in**
2 **the Loan Agreement Certification**

3 The court is satisfied that Schoenmann knowingly and
4 falsely swore, by signing the Loan Agreement, solely to use the
5 EIDL for working capital for her trustee business to alleviate
6 economic injury caused by COVID-19, which renders the EIDL
7 nondischargeable pursuant to 523(A)(2)(A). Not once, in
8 Schoenmann's trial brief, her trial testimony, or in any filing
9 in this adversary proceeding or in her bankruptcy, has
10 Schoenmann claimed her trustee practice suffered at all due to
11 the pandemic. At trial and in her briefs, she only states that
12 she sought the EIDL because she could, because she received an
13 email from the SBA letting her know she may be eligible to seek
14 EIDL funds. Schoenmann knew that she would not be using the
15 EIDL to alleviate economic injury caused by the pandemic because
16 she had not suffered any.

17 In her defense, Schoenmann first blames the SBA for failing
18 to provide a definition of "working capital." Without a
19 definition, Schoenmann argues, she could not possibly know what
20 the EIDL could or could not be spent on, and thus could not have
21 made any false representation as to how she would use the EIDL.

22 While the SBA did not define the term "working capital" in
23 the EIDL Application or in the Loan Agreement, Schoenmann could
24 have asked for clarification of the term at any point in the
25 application process. The record shows that Schoenmann reached
26 out to the SBA directly regarding her Application and pending
27 loan disbursement at least twice. (SBA Exs. 14, 24). Schoenmann
28 could have clarified how loan proceeds were to be used, in

1 addition to her main questions of when she would receive the
2 proceeds, had she so chosen. Schoenmann herself also references
3 the SBA's own online information webpage regarding uses of
4 proceeds: "Working capital to make regular payments for
5 operating expenses, including payroll, rent/mortgage, utilities,
6 and other ordinary business expenses, and to pay business debt
7 incurred at any time (past, present, or future)." (Schoenmann
8 Trial Brief, Dkt. 75 p. 13).

9 Schoenmann next argues that her defense of the probate
10 litigation was inherently a defense of her trustee practice and
11 was thus an appropriate expenditure of the EIDL as working
12 capital. In her view, because the probate litigants sought to
13 ensure Donn's estate received its fair share of marital assets
14 under California law, and because those marital assets would
15 include her income from her trustee practice (as well as her
16 rental properties and retirement account, which she claimed for
17 the first time at trial she considered to be part of her
18 business), the probate litigation was a direct threat to her
19 business and any money paid toward defending the probate
20 litigation was an expenditure of working capital. This argument
21 is not credible and appears to purposefully elide the point of
22 the EIDL entirely. No borrower was entitled to use EIDL
23 proceeds to fund a defense of unrelated pre-COVID litigation,
24 even if the outcome of that litigation could conceivably
25 jeopardize the borrower's business. The COVID-era EIDL program
26 was meant to utilize taxpayer funds to prop up small businesses
27
28

1 and nonprofits directly affected by the pandemic.⁴ "Any
2 professional should understand the difference between business
3 expenses, also characterized as working capital, and expenses
4 incurred during personal litigation between family members,
5 however characterized." (Order Granting Motion to Remove E. Lynn
6 Schoenmann as Chapter 7 Trustee, *In re Li's Capital LLC*, Case
7 No. 23-3043, Dkt. 144, p.10, *aff'd by Schoenmann v. United*
8 *States Tr. (In re Li's Cap. LLC)*, 2025 Bankr. LEXIS 902 (9th
9 Cir. BAP 2025)).⁵

10 For the first time at trial, Schoenmann presented as a last
11 minute and unlabeled exhibit a portion of the CARES Act that
12 clarifies that for the purpose of making loans, any EIDL
13 applicant is presumed to have been economically injured by the
14 COVID-19 pandemic. This does not help. Whatever presumptions
15 were mandated by the CARES Act, all EIDL applicants, including
16 Schoenmann, were required to affirm that the EIDL would solely
17 be used for that presumed economic injury caused by COVID-19.

18
19 ⁴ Division A, Title I of the CARES Act, which expands EIDL
20 eligibility, is titled "KEEPING WORKERS PAID AND EMPLOYED, HEALTH CARE
21 SYSTEM ENHANCEMENTS, AND ECONOMIC STABILIZATION; KEEPING AMERICAN WORKERS PAID
22 AND EMPLOYED ACT." Section 7(b) of the Small Business Act, which
23 enables the EIDL program, states that "[i]t is the declared
24 policy of the Congress that the Government should aid, counsel,
assist, and protect, insofar as is possible, the interests of
small-business concerns in order to ensure free competitive
enterprise"

25 ⁵ The court does not apply any principles of estoppel by quoting
26 its Order Granting Motion to Remove E. Lynn Schoenmann as
27 Chapter 7 Trustee, entered in the *Li's Capital* matter. The
28 court's position that working capital does not include capital
spent on personal litigation, even if that litigation may
indirectly affect a litigant's business, remains unchanged.

1 The presumption did not eliminate Schoenmann's duty to be
2 truthful in the Loan Agreement or to use the funds in the manner
3 prescribed by the Loan Agreement.

4 The SBA has shown justifiable reliance on Schoenmann's
5 representation that she would use the funds solely as working
6 capital for her injured business. As Schoenmann herself noted,
7 by law, the SBA had to presume economic injury when making EIDL
8 funding decisions. The SBA's witnesses testified that had
9 Schoenmann clarified her true plans for the EIDL, or if she had
10 failed to sign the Loan Agreement or somehow altered it to
11 remove that promise regarding spending of the EIDL, the SBA
12 would have refused to fund the loan even after approval of the
13 Application.⁶

14 Finally, the court is satisfied that the making of the loan
15 under these false pretenses caused injury to the SBA and finds
16 the SBA established the amount of those damages (principal of
17 \$924,700, plus pre-petition interest of \$3,040.11).

18 **B. Failure to List Contingent Liabilities or Legal Claims**
19 **in the Application**

20 The court is satisfied and finds that Schoenmann's
21 Application is a materially false written financial statement
22 which renders the EIDL nondischargeable under Section
23 523(a) (2) (B).

26 ⁶ The record reflects that Schoenmann initially attempted to
27 alter a different part of the Loan Agreement, and was contacted
28 by the SBA to inform her that alterations were not acceptable
(SBA Exs. 24, 25).

1 The Application is a document for the SBA to evaluate an
2 applicant's ability to pay back a loan, considering income,
3 assets (both personal and real property) and liabilities of all
4 types. The Application as a whole is a written financial
5 statement respecting the Debtor's financial condition. See *In*
6 *re Tallant*, 218 B.R. 58, 70 (BAP 9th Cir. 1998) (noting the
7 Ninth Circuit has adopted neither a broad nor expansive view as
8 to what constitutes a statement respecting financial condition
9 and finding a profit and loss statement was a statement
10 regarding financial condition). A written financial statement
11 that contains material omissions may still be nondischargeable
12 under Section 523(a)(2)(B). *In re Gertsch*, 237 B.R. 160, 168
13 (9th Cir. BAP 1999) (debt nondischargeable where debtor omitted
14 significant liabilities from personal financial statement).

15 The Application specifically directed prospective borrowers
16 to list any "Contingent Liabilities" including contingent
17 liabilities arising from "Legal Claims and Judgments." The
18 testimony of the SBA's employees at trial made clear that
19 liabilities listed in any EIDL application would trigger further
20 scrutiny, and potentially denial of the loan. The SBA's
21 internal Rapid Finance notes show notations to and from multiple
22 loan officers with requests for information and clarification
23 both before and after approval of the Application and prior to
24 funding the EIDL. (SBA Ex. 14). The SBA reviewed and relied on
25 the information Schoenmann provided in the Application, and that
26 reliance was reasonable. As previously noted, a lender may
27 demonstrate reasonable reliance "by showing that it followed
28 normal business practices." *In re Gertsch*, 237 B.R. at 170.

1 "Lenders do not have to hire detectives before relying on
2 borrowers' financial statements.... Although a creditor is not
3 entitled to rely upon an obviously false representation of the
4 debtor, this does not require him or her to view each
5 representation with incredulity requiring verification." *Id.*
6 (internal quotations omitted). The SBA has shown that it
7 followed its normal practices in reviewing Schoenmann's
8 Application, and Schoenmann's withholding of such significant
9 information from her written statement was material to SBA's
10 reasonable reliance.

11 Schoenmann chose not to disclose the probate litigation,
12 because, she says, she did not believe she could lose, and
13 therefore did not believe it was truly a contingent liability.
14 Whether Schoenmann thought the probate litigation had any merit
15 does not negate the fact that the litigation did indeed exist as
16 a substantial legal claim and contingent liability of hers. It
17 is beyond credulity that any professional, let alone one with
18 Schoenmann's extensive background, could believe that litigation
19 with such dire potential financial consequences was somehow not
20 a contingent liability.

21 A final legal argument Schoenmann makes in her trial brief
22 is her omissions in her Application cannot be considered written
23 statements respecting financial condition (as they are
24 unwritten) and thus fall out of the purview of Section
25 523(a)(2)(B), and since the omissions concern her financial
26 condition, they fall out of the purview of 523(a)(2)(A) as well.

27 While there have been recent developments regarding
28 fraudulent omissions in the Ninth Circuit, those developments do

1 not remove Schoenmann's actions from the reach of Section
2 523(a)(2). In *Oregon v. Mcharo (In re Mcharo)*, 611 B.R. 657
3 (9th Cir. BAP 2020), a debtor's failure to report a change in
4 income was considered a fraudulent omission for the purposes of
5 Section 523(a)(2)(A). More recently, in *Manion v. Strategic*
6 *Funding Source, Inc., d/b/a/ Kapitus Inc. (In re Manion)*, 667
7 B.R. 473 (9th Cir. BAP 2025), a debtor who signed an agreement
8 stating his financial circumstances had not changed
9 significantly when in fact they had, was found to have made a
10 fraudulent omission under Section 523(a)(2)(A). In short,
11 because an "omission" is definitionally not a "statement," then
12 it cannot be a statement regarding financial condition and is
13 still actionable under Section 523(a)(2)(A). *Id.* at 480-81.

14 The facts of this case are distinguishable from *Mcharo* and
15 *Manion*, both of which involve debtors failing to report changes
16 to their finances while under an obligation to do so. This case
17 is more closely aligned with the facts of *Gertsch*, in which a
18 debtor submitted a financial statement that contained fraudulent
19 omissions to create an overall skewed picture of that debtor's
20 financial state and was analyzed under 523(a)(2)(B). Here, as
21 in *Gertsch*, the entirety of the Application is a financial
22 statement, and the omissions within that financial statement
23 mean that the Application as a whole is a false representation
24 of Schoenmann's financial condition.

25 However, the *Manion* court recognized that the analysis
26 between Section 523(a)(2)(A) and (B) can become "murky". *In re*
27 *Manion*, 667 B.R. at 480. To the extent the omissions should be
28 taken out of the context of the overall financial statement,

1 those omissions would also be nondischargeable under Section
2 523(a)(2)(A), and with a far lower threshold of proof than that
3 of Section 523(a)(2)(B). For fraudulent omissions, a court need
4 only find that the omitted information was material, and that
5 the debtor had a duty to disclose the information. *Apte v.*
6 *Romesh Japra, M.D., F.A.C.C., Inc. (In re Apte)*, 96 F.3d 1319,
7 1323 (9th Cir. 1996) ("The nondisclosure of a material fact in
8 the face of a duty to disclose has been held to establish the
9 requisite reliance and causation for actual fraud under the
10 Bankruptcy Code.").

11 The SBA was proximately harmed in making the loan to a
12 debtor in the face of limited Congressionally appropriated funds
13 that could and should have gone to other borrowers.

14 The EIDL is nondischargeable under Section 523(a)(2)(B).

15 **III. The Penalty Owed to the Small Business Administration under**
16 **15 U.S.C. § 636(b) is Nondischargeable Pursuant to 11**
17 **U.S.C. § 523(a)(7)**

18 Section 523(a)(7) exempts from discharge any debt "for a
19 fine, penalty, or forfeiture payable to and for the benefit of a
20 governmental unit, and is not compensation for pecuniary
21 loss[.]"

22 Section 636(b) states that "Whoever wrongfully misapplies
23 the proceeds of a loan obtained under this subsection⁷ shall be
24 civilly liable to the [SBA] Administrator in an amount equal to
25 one-and-one half times the original principal of the loan."
26 This liability applies to anyone who wrongfully misapplies the

27
28 ⁷ Section 636 enables the EIDL program.

1 EIDL proceeds, no matter how the EIDL was obtained. In other
2 words, even if Schoenmann had the best of intentions when
3 applying for the EIDL, her wrongful misuse of the EIDL would
4 subject her to the penalty of Section 636(b) and
5 nondischargeability of that penalty under Section 523(a)(7).

6 While Schoenmann argues that a civil liability is somehow
7 not a synonym for "fine" or "penalty," the court concludes that
8 in the context of the surrounding language of Section 636(b),
9 the civil liability described by the statute is indeed a
10 penalty, nondischargeable in her bankruptcy.

11 **A. Section 636(b) is a Penalty Payable to a Government**
12 **Unit**

13 Section 636(b) does not define "civilly liable", and the
14 Code does not define "penalty." "A fundamental canon of
15 statutory construction is that, unless otherwise defined, words
16 will be interpreted as taking their ordinary, contemporary,
17 common meaning." *Perrin v. U.S.*, 444 U.S. 37, 42 (1979)
18 (citations omitted). "When determining the plain meaning of
19 language, we may consult dictionary definitions." *Af-Cap, Inc.*
20 *v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1088 (9th Cir.
21 2007). Webster's Dictionary lists a few applicable definitions,
22 including: "the suffering or sum to be forfeited to which a
23 person agrees to be subjected in the case of nonfulfillment of
24 stipulations" and a "disadvantage, loss, or hardship due to some
25 action."⁸ The civil liability described by Section 636(b) for
26 wrongful misapplication of EIDL proceeds is, indeed, the
27

28 ⁸ www.merriam-webster.com/dictionary/penalty.

1 dictionary definition of a penalty. It is not compensation for
2 a pecuniary loss and is an additional amount owed for wrongful
3 conduct.

4 The court's analysis may stop at a plain reading of the
5 statute. However, looking to the legislative history of Section
6 636(b) shows that Congress explicitly intended the "civil
7 liability" in the statute to be a penalty. In a 1972 statement
8 to Congress in support of the language of Section 636(b) at
9 issue in this case, then Small Business Administrator Thomas S.
10 Kleppe stated the following:

11 "Further, we support the concept of a civil
12 penalty for any borrower who wrongfully
13 misapplies the proceeds of his loan.
14 Enactment of such a penalty provision should
15 enhance the ability of this Agency to
16 prosecute successfully those cases of
17 willful or wrongful use of loan proceeds
18 which come to our attention."

19 Small Business Disaster Loans: Hearings on S. 1649, S.3337,
20 S.3446, S. 3725, S.3795, S.3797, S.3801, and H.R. 15692 Before
21 the Subcomm. on Small Business of the S. Comm. On Banking,
22 Housing, and Urban Affairs, 92nd Cong. 341 (1972) at 44.

23 The court is satisfied that the 150% penalty established
24 under Section 636(b) is nondischargeable pursuant to Section
25 523(a)(7). Schoenmann's misuse of those proceeds to pay her
26 probate litigation counsel, her bankruptcy counsel and save the
27 rest in a brokerage account results in her additional statutory
28 liability.

1 Schoenmann is liable for a penalty of one-and-one half
2 times the principal amount of the EIDL pursuant to Section
3 636(b), and that penalty is nondischargeable under Section
4 527(a).

5 **IV. Conclusion**

6 For the reasons set forth above, the outstanding EIDL
7 proceeds owed by Schoenmann to the SBA are nondischargeable
8 under Section 523(a) (2) and a separate penalty owed to the SBA
9 due to Schoenmann's misuse of the EIDL is nondischargeable under
10 Section 523(a) (7).

11 A Judgment After Trial against Schoenmann in the amount of
12 \$2,314,790.11 (EIDL principal of \$924,700.00; pre-petition
13 interest of \$3,040.11; \$1,387,050.00) is being entered
14 concurrently with this Memorandum Decision.

15 **END OF MEMORANDUM DECISION**